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A Long Legislative Journey

Passing the Intelligence Identities Protection Act of 1982 (U)

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From February 1979 to February 1982, I served as the Directorate of Operation's (DO) officer in the office that handled legislative affairs for CIA. At the beginning of this period, the office was called the Office of Legislative Counsel and was in the Office of the Director of CIA, with Frederick P. Hitz serving as Legislative Counsel. With Director William Casey's arrival at CIA, the Office of Legislative Counsel was replaced by the Office of External Affairs, which was responsible for legislative affairs between Congress and CIA. Robert Gates headed that office, and his successor was Billy Doswell, for whom I worked until I returned to the DO.

The Intelligence Identities Protection Act (IIPA) of 1982 was signed into law by President Ronald Reagan in a ceremony at CIA Headquarters on 23 June 1982. This legislation was the culmination of the efforts over several years by many people both inside and outside CIA to provide legal protection for DO officers serving under cover. The legislation has helped to discourage media disclosures of the true identities of DO officers.

Backdrop

The idea of obtaining legal remedy to the problem of malicious identification of CIA officers serving under cover did not spark much interest before 1975, when the Select Committee To Study Governmental Operations With Respect to Intelligence Activities, headed by Senator Frank Church, was established. The Church Committee's investigation of US intelligence activities and the investigation of its counterpart in the House of Representatives, the Pike Committee, placed the CIA under public scrutiny. No matter how one reads the reports, they criticize the Intelligence Community (IC) in general and the CIA in particular for some of their past activities. This criticism appeared to open the door for private US citizens with less than noble motives. With the assistance of disaffected former CIA employees, these citizens began an effort to destroy CIA effectiveness. In the late 1970s, publications such as Counterspy, Quicksilver Times, and the Covert Action Information Bulletin came into existence with part of their stated purpose being to identify CIA officers under cover. With former CIA malcontents such as Philip Agee listed on their masthead, and with the cooperation of John Stockwell and others, these forums learned the methods of guessing the names of CIA officers posted abroad. With the assistance of the now-classified Department of State's Foreign Service Officer (FSO) listing, they named names and provided the entire professional history of a number of CIA officers. Some were serving overseas during that period.

The Beginning

Senator Lloyd Bentsen introduced agent identities legislation in the Senate in 1975 after Richard S. Welch, the CIA chief in Athens, Greece, was gunned down in front of his home. This murder occurred

within a month of the time he was publicly identified by a local newspaper, which drew on information that came from Agee in the Counterspy publication. There was little or no legislative action taken on identities legislation between 1975 and the 1980s.

On 30 January 1980, Deputy Director of CIA Frank Carlucci testified before the Subcommittee on Legislation of the House Permanent Select Committee on Intelligence (HPSCI) about the IIPA.¹ He made a strong case in his testimony supporting a carefully crafted legislative remedy to safeguard "the nation's intelligence capabilities without impairing the rights of Americans...." He also made the point that identification of US intelligence officers serving overseas requires "specialized knowledge" of those who had worked in the US intelligence establishment.

In May 1980, Carlucci was interviewed at CIA Headquarters by an ABC news correspondent. The main topic of the interview was "charter legislation," which was viewed by some as a remedy to alleged CIA abuses uncovered four years earlier during Congressional hearings. In the context of passing a charter for CIA, the seeds of the idea for providing legislation "making it a crime to disclose the names of CIA operatives working abroad" was born.² Carlucci indicated that CIA supported such legislation, and he suggested that, where information is legitimately classified, CIA would favor making it a criminal offense to publish CIA officers' or CIA agents' names. This was one of the first public pronouncements by a CIA official on a possible legislative remedy to naming names. When asked if he had "a problem" with the First Amendment implications, Carlucci replied that this had been looked at by the Justice Department; while there were First Amendment issues, the framing of the legislation could be done in a manner so as not to "interfere with First Amendment rights."

Incident in Jamaica

At 2:30 a.m. on 4 July 1980, in Kingston, Jamaica, the house of (b)(1) (b)(3)(c) was attacked with (b)(1) gunfire and a bomb. The attack occurred while he was asleep and his family was away on holiday. Le (b)(3)(c) than 48 hours earlier, (b)(1) had been named publicly in Jamaica as a "CIA agent." (b)(3)(c) was among 15 people named as CIA agents at the US Embassy in Kingston by a man who identified himself as Louis Wolf, editor of the Covert Action Information Bulletin headquartered in Washington, DC.³

The shooting incident was widely reported in the US media. Wolf reportedly "accused CIA of trying to undermine the socialist government of Jamaica" and "also supplied biographical information about those he named."⁴ The articles also noted that "Wolf was co-author of two volumes called Dirty Works along with Philip Agee."⁵ Several of the news articles on the shooting also noted that there was no law on the books that would permit prosecution of Wolf for publicizing the names of those he said were connected with CIA. In reaction to the incident, CIA's Director of Public Affairs, Herbert Hetu, said that "The CIA has unsuccessfully sought legislation that would make it a criminal offense to identify intelligence officers who are working under cover."⁶

DDCI Carlucci, a former FSO, ordered the news articles collected and sent to all members of the Senate Select Committee on Intelligence (SSCI), of the HPSCI, and to the leadership in the Senate and House of Representatives. In the unclassified covering letter, Carlucci said, "We can ill afford to wait until another member of the US overseas mission comes home in a casket before the Congress addresses this pressing problem."⁷

The incident intensified the debate about passing legislation protecting CIA employees serving under cover. Suddenly, every news outlet was voicing an opinion.

Some Momentum

During July 1980, this same debate was being held in both houses of Congress. Following the incident, the Congress appeared to be ready to act. The HPSCI "rushed out a bill to outlaw the publication of any information obtained from either classified or unclassified sources that identifies a (b)(3)(c) (b)(1)

covert agent." ⁸ The bill's stated intent was to halt the work of such people as Louis Wolf. On 25 July 1980, the HPSCI approved its version of the bill (HR 5615) by a voice vote. On 29 July 1980, the "SSCI voted 11 to 0 for a bill (S 2216) that would make it a crime punishable by as much as three years' imprisonment for private citizens to disclose the identities of 'covert' intelligence agents in certain circumstances." ⁹ It was also noted that the voting in both committees indicated that, unless the Judiciary Committees of Congress intervened, some kind of bill might become law, leaving the First Amendment questions to the courts to decide. The bills were then referred, respectively, to the House and Senate Judiciary Committees.

Opposition

Prospects seemed favorable for the passage of some sort of legal protection, but there were questions in the media about protecting First Amendment rights, and there were Senators and Representatives who continued to question the necessity of such legislation. Meanwhile, the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee began open hearings on the HPSCI bill. On 26 August 1980, the subcommittee reported the bill with amendments that weakened it. The bill as reported would outlaw disclosures by "present and past government officials but not by outsiders." ¹⁰ This weakened version would make it difficult to prosecute private citizens such as Louis Wolf. Those Congressmen who proposed the weakening amendments called the unamended bill "clearly unconstitutional" and used this standard to prevail. ¹¹

The amended bill was referred to the full House Judiciary Committee, whose chairman was Congressman Peter Rodino. He reportedly believed that the bill in its weakened form was still unconstitutional, but he recognized that it had formidable support. He and his allies said they thought such a bill would "outlaw the revelations of a wide range of CIA misdeeds." ¹²

During the House deliberations, the DCI and the DDCI were on Capitol Hill each day answering questions and providing information on CIA's stand on this important issue. (b)(3)(c)
 lawyers assigned to the DCI, put together "fact sheets" which responded to misconceptions that opponents of the legislation sought to distribute. The Carter administration policy supporting the legislation was being distorted by its opponents, and these were attempts to ensure the misconceptions were addressed with factual information. The committee approved a stronger version of the bill on 3 September 1980, despite calls by opponents that it was unconstitutional. By a 2-to-1 margin, the committee rejected its subcommittee's view that such a law could deprive private citizens, especially journalists, of First Amendment rights. The proposal to limit the bill's scope to persons with access to US Government secrets was also rejected by a 2-to-1 margin. The stronger bill (HR 5616) was voted out of the House Judiciary Committee by a vote of 21 to 8. When it came to a floor vote in the House, it stood a good chance of passage.

In the Senate

The battle was not yet won, and the action switched to the Senate Judiciary Committee, which was scheduled to take up the SSCI bill (S 2216).

During the Senate Judiciary Committee hearings, allegations were made that the CIA was devising "a whole gamut of artificial government titles and phony positions for US intelligence officials working overseas." ¹³ The critics said the proposed new law would allow CIA to use the Peace Corps for intelligence purposes, which Carter administration officials denied. This loose linkage of the CIA to the Peace Corps was damaging to the chances for passage of a strong bill out of the Senate Judiciary Committee. The Carter administration was put in the position of trying to prove the negative, a position hard to defend, especially when the CIA regulations governing such matters are classified.

On 17 September 1980, the Senate Judiciary Committee by a vote of 8 to 6 gutted the bill with four amendments, one of which specifically denied the use of the Peace Corps and of the Agency for International Development for intelligence purposes. The bill moved to the Senate floor for debate.

Chances for passage were dimming because of the rush to recess for the fall election campaign and wrangling over what the legislation should contain. In late September 1980, the proposed legislation was shelved in the Senate when the majority and the minority leaders agreed that passage was not feasible.¹⁴

On 2 October 1980, the Congress went into recess for the elections. A lameduck session would occur after the recess, but it probably would not address the legislation. Thus, all efforts would have to begin again in the new Congressional session in 1981, when there would be a change in party leadership of both houses of Congress. In December 1980, the Covert Action Bulletin published what was said to be the names of eight senior CIA officers serving under cover overseas.

An Aside

During my own work in 1980 in behalf of this legislation, an unforgettable incident occurred. I volunteered to help distribute information on the Carter administration's version of the legislation to the staff of each member of the House of Representatives. The information spelled out the objectives of the proposed legislation. I was assigned to go to the offices of each member of the California delegation and to drop off material. The idea was not to lobby but to be certain that each member had the opportunity to be aware of the President's position on this subject. Other, higher ranking members of the Carter administration made direct contacts with Congressmen and Senators. I went to one Congressman's office, introduced myself to the secretary, told her I represented CIA, and provided the information packet. The Congressman evidently heard me in the outer office, and he asked the secretary to show me in. I had no idea what he wanted. For the next 20 minutes, the Congressman pilloried the CIA, accusing the Agency of having "fronts" that stole official US Government funds and of all kinds of other felonies. I just sat back and let him rant on. When he was finished, I thanked him for his views. He escorted me to the door, and he said, "I hope you get a job someday where you will do something for your country."

This episode illustrates the depth of feeling on both sides of this issue by members of Congress. When I returned to the Agency and told Fred Hitz about the incident, he laughed and said, "Welcome to legislative liaison work."

Another Attempt

With the change in the leadership in Congress from Democrat to Republican, the Agency's plight in many areas received renewed attention. Senator Barry Goldwater, the new chairman of the SSCI, said, "I think the CIA is going to find a very cordial reception here. It is difficult to discover any opposition to intelligence. We've learned a lot."¹⁵ Another bill was to be introduced in the new Congress that would make it a criminal offense for past or present CIA employees to release the names of Agency officials. President Reagan appeared to be determined to "restore the muscle of the CIA and make it an important element in his administration's global strategy."¹⁶ As DCI, he nominated William Casey, who had served in the OSS of World War II.

On 2 February 1981, Senator John Chafee introduced S-391, a bill to "amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying agents, informants and sources. . . ." ¹⁷ The bill was entitled the Intelligence Identities Protection Act. Senator Chafee issued press releases and wrote letters to the media backing the bill.

The chances for passage "in the light of the hawkish sentiment in Congress aroused by the Soviet invasion of Afghanistan in late 1979 and of more conservative tones of Washington since the national elections" ¹⁸ were judged good. At the same time, however, the American Civil Liberties Union, an opponent of such legislation, said that, if enacted, the legislation would be tested in court.

On 25 February 1981, two identities protection bills, HR 4 and HR 1659, were introduced in the House of Representatives. Thus, the issue of identities protection was on the docket in both houses of Congress early in the new session--a good sign for eventual passage.

New Hands at CIA

In February 1981, William Casey became DCI. The Office of Legislative Counsel was soon "dis-established" and downgraded by an executive decision. Casey also abolished the Office of Public Affairs. His rationale for the move was that the Agency had too high a profile with Congress and the media.

Fred Hitz eventually departed CIA to go into private law practice. The office that handled Congressional affairs was renamed Office of External Affairs and was led by Robert Gates. Billy Doswell, a well-known Congressional lobbyist from Virginia, was brought in to head the office responsible for Congressional affairs.

Expulsions From Mozambique

In early March 1981, the Mozambique Government expelled four US Embassy personnel from the country, claiming they were part of a "major foreign espionage network." US officials disputed these charges, and a State Department spokesman said the expulsions had been ordered after a Cuban espionage team had seized one of the Americans and failed to recruit him as a spy. The State Department also said it was "not coincidental" that the expulsions came shortly after a group of Americans who published an anti-CIA bulletin had visited Mozambique. (Louis Wolf had recently visited Mozambique.¹⁹) These expulsions lent urgency to the passage of identities protection legislation.

Meanwhile, the intentional identification of CIA officers overseas continued. The April 1981 issue of Covert Action Information Bulletin published the alleged names of 12 Embassy officers along with extensive biographic information.²⁰

Casey's Support

DCI Casey's backing for passage of the legislation was strong and unflagging. He wrote letters to Senator Patrick Leahy and others who had specific questions on S-391. He also made personal calls to Senators and Representatives urging passage of the legislation. These efforts were especially important during July 1981, when the Senate Judiciary Committee was considering the bill. Casey deserves a lion's share of credit for the eventual passage of protective legislation.

A Supreme Court Decision

On 29 June 1981, the Supreme Court decided in favor of the government on the question surrounding the withholding of Philip Agee's passport. This was a legal boost for passage of the identities legislation. DCI Casey noted in a letter to HPSCI Chairman Edward Boland that "This opinion goes a long way toward dispelling any residual concerns about the constitutionality of the identities legislation."²¹ Senator Chafee distributed the essence of the Supreme Court decision to all Senators, and also mentioned in his letter that his bill had accumulated 41 co-sponsors.

The Peace Corps Problem

In June, Loret Miller Ruppe, Director of the Peace Corps, wrote a letter to DCI Casey noting the consideration of the identities legislation and outlined the 20-year policy separating CIA from the Peace Corps.²² She requested a response and suggested both letters be shared. . . "with appropriate members of Congress so that there will be no mistake as to Peace Corps' total separation from the function of intelligence gathering." Casey's response assured Miller Ruppe that he had no intention of seeking to use the Peace Corps to provide cover for clandestine intelligence collection. He also noted that there was a longstanding policy barring use of the Peace Corps and that it was reflected in CIA regulations. This exchange was a fatal blow to those who used this allegation to delay the legislation.

Committee Activity

In mid-July, the majority and minority leaders on the Senate Judiciary Committee agreed that the identities bill would be voted on at a committee meeting on 15 September. Most were optimistic the committee vote would be favorable, but, after the disappointment of 1980, no one took anything for granted. Also, the delay in bringing the bill to a vote in the committee reflected the deep feelings of Senators on both sides of the issue. Senator Biden, an opponent of S-391 as written, stated that he was "counting on the press and the editorial boards of this country to focus on S-391."

On 22 July, the HPSCI approved its version of the identities bill (HR-4). The House of Representatives was expected to pass HR-4 readily, despite opposition from civil libertarians and press organizations.²³ There were differences between HR-4 and S-391, and supporters of identities legislation hoped that S-391 would be the version that became law because its scope was broader.

On 23 September 1981, the full House of Representatives passed the Intelligence Identities Protection Act by a vote of 354 to 56 with 23 abstentions. The original bill was amended on the House floor to make it stronger than the one reported out of the HPSCI. The amendment, which used language from S-391, was offered by Representative John Ashbrook and passed by a 226-to-181 vote. This made HR-4 and S-391 almost identical and boded well for eventual passage and signing into law. The Ashbrook amendment led HPSCI Chairman Boland to repudiate the bill.

The passage of the amended version of HR-4 was a major step, but the Senate still had to act. Delay was the Senate opponents' tactic; everyone was aware that, once S-391 got to the floor of the Senate, it would pass. On 14 September, Senator Thurmond, chairman of the Senate Judiciary Committee, had received a letter from President Reagan which stated that, "I cannot overemphasize the importance of this legislation." This letter made it clear passage of S-391 was a Reagan administration priority.²⁴

(b)(6) the wife of (b)(3)(c), whose house was machinegunned in Jamaica, also wrote a letter to Senator Thurmond (b)(1)ing him to support and expedite the passage of the intelligence identities bill without further delay.²⁵

A Weaker Version

On 6 October, the opponents of the bill won the day when the Senate Judiciary Committee voted, 9 to 8, to weaken the identities bill via an amendment introduced by Senator Biden. The Committee then voted the amended legislation out of committee by a tally of 17 to 0.

Thus, the bill's opponents, knowing they could not stop its passage, succeeded in weakening it by amendment. While the differences between the Chafee version and the version voted out of the Judiciary Committee were arcane and legal in character, the latter version made it much harder to prosecute anyone under the statute if and when it became law. The opposition was using more subtle approaches to weaken any law passed. But HR-4 and S-391 were substantially the same bill. It finally appeared that success was near.

Senator Chafee, meanwhile, continued his lobbying efforts for S-391 and circulated a letter to his fellow Senators outlining his efforts to get the bill passed. He also made it clear he would offer an amendment on the Senate floor to return the bill to its original form.

In mid-November, the vote count had 40 Senators for passage of a strong bill, 33 against, and 27 undecided. It was to these 27 that the White House and other supporters of the bill turned their attention.

Action Delayed

On 4 December, the White House released a statement by President Reagan announcing his signing into

law the Intelligence Authorization Act for Fiscal Year 1982.²⁶ In the last paragraph, the President noted his "hope that I will soon be able to sign the Intelligence Identities Protection Act, which has passed the House and is awaiting floor action in the Senate. I strongly support this measure, preferably in the form in which it was passed by the House of Representatives; we must act now to protect our intelligence personnel. . . ." But there was much action in the Senate before the President was to get his wish. The Act was scheduled to be brought to the floor in mid-December, but that was not to be. A threatened filibuster by Senator Bradley forced a delay on the bill as Congress hurried to conclude its 1981 session. The Senate leadership put the bill aside temporarily, thereby delaying any action on it until 1982.

Final Action

On 1 March 1982, agreement was finally reached to take up S-391 again, with the Chafee amendment being the first item of consideration. The debate went on for some time. Although I had left the Congressional Relations staff in February for re-assignment in the DO, I continued to follow the bill's progress.

The Senate accepted Senator Chafee's amendment (called the Chafee-Jackson amendment) by a vote of 55 to 39. Thus, a stronger version of the bill would be considered by the full Senate. The opponents had lost their battle to make it less effective.

The final vote in the Senate, taken on 18 March 1982, was 90 to 6.²⁷ The bill then had to go to a conference committee. The House of Representatives approved the conference report on 3 June by a vote of 315 to 32. On 11 June, the Senate approved it by a vote of 81 to 4. On 23 June 1982, President Reagan, in an outdoor ceremony at CIA Headquarters, signed into law a bill making it a crime "to disclose the names of US intelligence agents, even if the information is obtained from public records."

I was on assignment and did not get to the ceremony. As a case officer, I was used to this role. I just wanted protection for case officers and their families. The staff director of the SSCI kindly sent me a letter thanking me for my efforts in working for the passage of the Act. I am as proud of it as I am of any of my accomplishments while working at CIA.

Notes

¹ Statement of DDCI Carlucci before HPSCI's subcommittee on Legislation, 30 January 1980, on H.R. 5616, the "Intelligence Identities Protection Act."

² *The Washington Post*, page A32, 8 May 1980. Senator John H. Chafee sought to add an amendment to this effect to the so-called charter bill. The bill never came to a vote.

³ News article by Lloyd Williams of the Associated Press; Kingston, Jamaica, 6 July 1980 edition of *The Philadelphia Inquirer*.

⁴ News article by Jo Thomas of *The New York Times*, 4 July 1980.

⁵ News article by Jeremiah O'Leary, *The Washington Star*, 6 July 1980.

⁶ *The New York Times*, Washington, DC, 4 July 1980.

⁷ Unclassified letter from Carlucci to various members of Congress, 8 July 1980.

⁸ *The Washington Post*, article by Celia W. Duggar, 26 July 1980.

- 9 *The New York Times*, article by Charles Mohr, 31 July 1980.
- 10 *The Washington Post*, article by George Lardner, Jr., 27 August 1980, p. A5.
- 11 *The New York Times*, article by Charles Mohr, 27 August 1980, p. A13.
- 12 *The Washington Post*, article by George Lardner, Jr., early September 1980.
- 13 *The Washington Post*, article by George Lardner, Jr., 16 September 1980, p. A13.
- 14 *The New York Times*, article by Charles Mohr, 2 October 1980, p. A20.
- 15 *Time* magazine, 19 January 1981, p. 21.
- 16 *Ibid.*
- 17 *Congressional Record*, 2 February 1981, Vol. 127, No. 18, p. S 935. Also pp. S 839 to S 842.
- 18 *The New York Times*, article by Charles Mohr, 6 February 1981.
- 19 *The Washington Post* article by Caryle Murphy, 6 March 1981, p. A 24.
- 20 *Covert Action Information Bulletin*, No. 12, April 1981.
- 21 Casey letter to Boland, 15 July 1981.
- 22 Ruppe letter to Casey, 25 June 1981.
- 23 *Congressional Quarterly*, 25 July 1981, p. 1350.
- 24 Letter from President Reagan to Senator Thurmond, 14 September 1981.
- 25 Letter from (b)(6) to Senator Thurmond, 14 September 1981.
- 26 White House press release, 4 December 1981.
- 27 *The Washington Post*, article by George Lardner, Jr.; 19 March 1982, p. A 5.

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